



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XC703;

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training Activities in the Gulf of Alaska Study Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the U.S. Navy (Navy) for the take of marine mammals incidental to military readiness activities conducted in the Gulf of Alaska (GOA) Study Area.

**DATES:** Effective from February 3, 2023 to February 2, 2030.

**ADDRESSES:** The LOA and supporting documentation are available online at:

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>*. In case of problems accessing these

documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Leah Davis, Office of Protected Resources, NMFS, (301) 427-8401.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce (as

delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, the public is provided with notice of the proposed incidental take authorization and provided the opportunity to review and submit comments.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stocks for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in this rule as “mitigation measures”); and requirements pertaining to the monitoring and reporting of such takings. The MMPA defines “take” to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

The National Defense Authorization Act (NDAA) for Fiscal Year 2004 (2004 NDAA) (Pub. L. 108-136) amended section 101(a)(5) of the MMPA to remove the “small numbers” and “specified geographical region” provisions indicated above and amended the definition of “harassment” as applied to a “military readiness activity.” The definition of harassment for military readiness activities (Section 3(18)(B) of the MMPA) is (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration,

surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment). In addition, the 2004 NDAA amended the MMPA as it relates to military readiness activities such that the least practicable adverse impact analysis shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

More recently, Section 316 of the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115-232), signed on August 13, 2018, amended the MMPA to allow incidental take rules for military readiness activities under section 101(a)(5)(A) to be issued for up to 7 years. Prior to this amendment, all incidental take rules under section 101(a)(5)(A) were limited to 5 years.

### **Summary of Request**

On January 4, 2023, we issued a final rule responding to a request from the Navy for authorization to take marine mammals incidental to military readiness activities conducted in the GOA Study Area (88 FR 604, January 4, 2023). The following types of training, which are classified as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA, are covered under the final rule: surface warfare (detonations at or above the water surface) and anti-submarine warfare (sonar and other transducers). The Navy is also conducting Air Warfare, Electronic Warfare, Naval Special Warfare, Strike Warfare, and Support Operations, but these activities do not involve sonar and other transducers, detonations at or above the water surface, or any other stressors that could result in the take of marine mammals.

### **Authorization**

In accordance with the final rule, we have issued a LOA to Navy authorizing the take of marine mammals incidental to training activities in the GOA Study Area, as described above. Take of marine mammals will be minimized through the

implementation of the following planned mitigation measures: (1) use of defined powerdown and shutdown zones (based on activity), which are designed to minimize the number and severity of takes; (2) measures to reduce the likelihood of ship strikes, including the use of trained Lookouts to observe for marine mammals in designated zones on underway vessels and issuance of pre-event awareness messages to alert vessels and aircraft participating in training activities within the TMAA to the possible presence of concentrations of large whales on the continental shelf and slope; and (3) operational limitations in certain areas and times that are biologically important (*i.e.*, for foraging) for marine mammals. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Navy will submit reports as required.

Based on the findings and information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: February 13, 2023.

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Kimberly Damon-Randall,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.